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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,803	05/31/2001	Lawrence J. Choi	1005/006	6606
34060	7590	04/20/2005	EXAMINER	
MICHAEL N. HAYNES 1341 HUNTERSFIELD CLOSE KESWICK, VA 22947			PHAM, KHANH B	
			ART UNIT	PAPER NUMBER
			2167	

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/867,803

Applicant(s)

CHOI ET AL.

Examiner

Khanh B. Pham

Art Unit

2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2, 7 and 8 is/are allowed.
- 6) ☒ Claim(s) 1, 5 and 6 is/are rejected.
- 7) ☒ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

1. In view of the Appeal Brief filed on December 3, 2004, PROSECUTION IS HEREBY REOPENED. ***A new ground of rejection*** is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

2. If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1, 5-6 are rejected** under 35 U.S.C. 102(b) as being anticipated by McLennan ("Statistics - A Powerful Edge!", 1998), hereinafter "**McLennan**".

**As per claim 1**, McLennan teaches a computer-assisted method (Pages 37-45) for evaluating cluster assignment for an observation comprising:

- “for each of a plurality of observations, obtaining a data set containing no more than one proxy value for each of a plurality of variables, each variable having a plurality of possible values” at page 81, example section.

(McLennan teaches a data set obtained from an observation of battery life for thirty AA size batteries, the data set contains one proxy value for each variables (i.e., the minutes), wherein the possible value for each variables ranges from 360 to 439)

- “the data set also containing a cluster assignment for the observation, the cluster assignment identifying one cluster from a plurality of clusters” at the table at page 81;

(McLennan assigns the observations into eight different clusters, based on the proxy values of the variables)

- “for each observation from the plurality of observations, calculating a percent of proxy values for the plurality of variables that equal a mode of that observation’s corresponding cluster’s proxy values for the corresponding variables” at pages 83 and 144;

(The table at page 83 shows the **mode** of the observation is 7 (i.e., “the most frequently observed value”) and the **percent**

of proxy values for the plurality of variable that equal a mode is 23% as shown in the "Percentage frequency" column.)

- "outputting the percent for each observation" at page 83.

**Claims 5 and 6** recite "a computer readable medium containing instruction" and "an apparatus" for performing the method similar to claim 1, and therefore are also rejected by the same rational. McLennan also teaches the uses of computer system and software applications for performing data analysis at pages 37-43.

#### ***Allowable Subject Matter***

5. Claims 2, 7-8 are allowed.
6. Claims 3-4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. The following is a statement of reasons for the indication of allowable subject matter:

Applicant's argument presented in the Appeal Brief date December 3, 2004 regarding claims 2, 7-8 is persuasive. Because applicants have elected to act as their own lexicographer, the examiner therefore relied on Applicant's specification for the definitions of claimed limitation: "estimating a purposeful probability" as defined at page 25, line 14 through page 26, line 1. In view of the specification, prior art of record does not teach the combination of claimed elements including "estimating a purposeful probability" as claimed. Thus, prior art of record neither renders obvious nor anticipates

the combination of claimed elements in light of the specification. After a further search and a thorough examination of the present application and in light of the prior art made of record and applicant's specification, claims 2, 7-8 are allowed.

Claims 3-4 have been previously indicated as allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

8. The prior art made of record, listed on form PTO-892, and not relied upon, if any, is considered pertinent to applicant's disclosure.

If a reference indicated as being mailed on PTO-FORM 892 has not been enclosed in this action, please contact Lisa Craney whose telephone number is (571) 272-3574 for faster service.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh B. Pham whose telephone number is (571) 272-4116. The examiner can normally be reached on Monday through Friday 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2167

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Khanh B. Pham  
Examiner  
Art Unit 2167

KBP  
April 15, 2005

*John S. Wessum*  
Primary Examiner

*John E. Breene*  
JOHN BREENE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER